

Case: Otterly St. Catchpole Dept. of Children & Family Services, and its subordinate bureau, Child Welfare Bureau v. Lucius Malfoy, et. al.

Issue: Whether the “special needs” exception to the warrant requirement applies to searches and seizures conducted in a child abuse investigation.

Procedural Posture: Lucius Malfoy filed a complaint under 42 U.S.C. § 1983 in the U.S. District Court for the District of Hogsmeade on April 4, 2012, alleging the CWB conducted an unreasonable search and seizure and the search violated Malfoy’s parents’ substantive due process right to the care, custody, and control of their children. The parties filed cross-motions for summary judgment, and the trial court granted summary judgment for Plaintiff Malfoy on June 23, 2012, on grounds that the CWB (1) did not establish probable cause, (2) that child abuse is not a “special need” separate and apart from the state’s general law enforcement interest, and (3) that defendants’ actions were unreasonable. Defendant CWB appealed entry of that order to the US Court of Appeals for the Fourteenth Circuit (this Court) on June 29, 2012. It (you) granted the appeal on July 5, 2012, certifying the above issue.

Facts: Luna Lovegood’s father put her on a “Master Cerebral Cleanse” diet, consisting of mainly 8 radishes. School administrators found out and met with Mr. Lovegood, who was uncooperative and unresponsive. In December of 2011, under Educational Decree 23, the school nurse began conducting physical exams, consisting of weigh ins and urine samples, and later required the children to document all of the food they were eating and details about their home lives. In February of 2012 Luna fainted at the school. School administrators reached out to the Child Welfare Bureau, who then instituted a policy (Policy 47) that Bureau would carry out random visits to Howarts’ students’ family homes to inspect food cabinets and speak with parents. If a parent refused the search they would be brought into the CWB’s offices for questioning. No search warrants or court orders were required for the searches, but the searches were based on the suspicions of child abuse in Lovegood’s case. In the month of March the authorities searched around 100 households, including the Malfoy’s home. The searches were limited to the kitchen and to food items; were not to exceed more than 3 pantries or cabinets, and personnel were to enter no other part of the home. Personnel were not to go through any mail or reading materials in plain view.

Law: The United States Supreme court has upheld the “special needs” doctrine as applied to cases where there are special needs beyond the normal need for law enforcement and that call for immediate action, making the warrant and probable cause requirements impractical. Bd. of Educ. Pottawatomie Cnty. v. Earls, (2002); Griffin v. Wisconsin, (1987); O’Connor v. Ortega, (1987); New Jersey v. T.L.O., (1985). The Supreme Court has held that were a special needs pathway does not involve law enforcement, a warrant may not be required if (1) the state demonstrates a special need discrete and superior to the general interest of law enforcement, and (2) the search is reasonable. Ferguson v. City of Charleston, (2001). Once special need is found to exist, the Supreme Court applies a balancing test to determine (1) the nature of the privacy interest, (2) the character of the intrusion, and (3) the nature and immediacy of the government’s legitimate interest. Samson v. California, (2006), et. seq.

The special needs Supreme Court cases share some features: (1) an exercise of governmental authority distinct from law enforcement—such as *in loco parentis* authority of school officials, (2) a lack of individualized suspicion of wrongdoing and a concomitant lack of individualized stigma based on such suspicion, and (3) an interest in preventing future harm—generally involving the health or safety of the person being searched or of others directly touched by that persons' conduct, rather than deterrence or punishment for past wrongdoing.

The 14th Circuit is a “special needs” jurisdiction. Where a non-investigative pathway does not involve law enforcement, a warrant may not be required where (1) the state demonstrates a special need discrete and superior to the general interest in law enforcement, and (2) the search itself is reasonable. Tenenbaum v. Williams, (2nd Cir. 1999). The Circuits have split over whether a child abuse or neglect investigation constitutes a special need:

Approach I (7th/4th/10th Circuits): Child abuse investigations qualify as a “special need.” A warrantless search may be conducted by a social service worker in cases where the state demonstrates a “special need” discrete and superior to the general interest in law enforcement.

Approach II (2nd/3rd/5th/9th Cir.): Child abuse investigations do not constitute a “special need,” particularly when the search is in the home or involves law enforcement. These circuits apply the same scrutiny to social workers as applied to police officers, requiring a warrant or exigent circumstances.

Approach III (7th Cir. Revised): Created a jurisdictional element that determines appropriateness of applying special needs to child abuse cases based on whether the search occurred in public school, private school, or in the home. The Court held that a warrantless search on private property is presumptively unreasonable whether administrative or criminal. However, it can be argued that this holding is dicta rather than binding precedent because the state did not argue the special needs doctrine as part of its defense.